

ORDINANCE NO. _____, SERIES 2008

AN ORDINANCE OVERTURNING THE RECOMMENDATION OF THE PLANNING COMMISSION ON PROPERTY LOCATED AT 5911 SOUTH WATTERSON TRAIL, CONTAINING A TOTAL OF 6.3 ACRES AND BEING IN LOUISVILLE METRO (CASE NO. 9153).

Sponsored By: Councilman Robin Engel

WHEREAS, the Legislative Council of the Louisville/Jefferson County Metro Government (the “Council”) has considered the evidence presented at the public hearing held by the Louisville Metro Planning Commission (“Commission”) and the recommendations of the Commission and its staff as set out in the minutes and records of the Commission in Case No. 9153, and

WHEREAS, the Council has made different findings of fact than did the Commission, after a careful review of the Commission’s record in Case No. 9153, and has stated them herein, and,

WHEREAS, the Council wishes to overturn the recommendation of the Planning Commission and deny a request made to change the zoning from R-4 Single-Family Residential to C-1 Commercial at 5911 South Watterson Trail, containing 6.3 acres and being in Louisville Metro, to allow a commercial development to be constructed at this location (the “Proposal”), as the Proposal does not comply with the guidelines, goals, policies and objectives of Cornerstone 2020, the Comprehensive Plan, and fails to meet any of the other statutory criteria for approving a zoning map amendment, and conflicts with some of the goals and objectives of the Hurstbourne Corridor Study, which applies to the property that is the subject of the Proposal, and,

WHEREAS, the Council finds that the Proposal fails to meet the guidelines of Community Form/Land Use Guideline 1, and specifically Policy B.3, which states that the Neighborhood Form District, in which the Proposal is located, may contain neighborhood centers with a mixture of offices, retail shops, restaurants and services, if those centers are at a scale that is appropriate for nearby neighborhoods, because the Proposal is not appropriately located as a neighborhood activity center, does not blend with the existing neighborhood, and appears to be designed to accommodate pass-by users, rather than neighborhood users, as there are three drive-through areas located on a site with only approximately 38,000 square feet of retail space, and no direct pedestrian connections between adjacent residential uses and the Proposal, and because, despite a binding element restricting drive through restaurants, automobile repair, gas stations and liquor stores, these uses are permitted in the C-1 zoning district and could locate there as a matter of right, and,

WHEREAS, the Council further finds that the Proposal fails to meet Policy A.2 of Community Form/Land Use Guideline 2, Centers, because the Proposal is not located in an existing activity center, as defined by Cornerstone 2020 as “an area of concentrated, mixed-use activity that often has a residential component,” because the closest existing non-residential developments are at least several thousand feet away at the intersection of Bardstown Road with Hurstbourne Parkway, and the Proposal would introduce a commercial element to a universally residential area, and,

WHEREAS, the Council further finds that the Proposal fails to meet Policy A.3 of Community Form/Land Use Guideline 2, Centers, because the Comprehensive Plan anticipates that retail commercial uses should be located in an existing activity center, which is defined by Cornerstone 2020 as an area of concentrated, mixed-use activity that often includes a residential component, where it can be demonstrated that the population supports the use, and in this case no activity center exists at the intersection of South Watterson Trail and South Hurstbourne Parkway, as existing land use patterns at this intersection consist solely of various types of residential uses, and,

WHEREAS, the Council further finds that the Proposal fails to meet Policy A.4 of Community Form/Land Use Guideline 2, Centers, because the Proposal is designed as a “strip center” with buildings set in a line that wraps around the east and south property lines, which are at the rear of the property, with the rear of the buildings, which are totally devoid of any architectural features and which therefore do not invite the neighborhood to access the development but rather turn the development’s back to the neighborhood, addressing adjacent existing and potential future residential uses, parking in front of the buildings, and one “out-lot,” no provisions for cross-access to adjacent undeveloped property to the south, and will therefore not support an efficient land use pattern for the area, and,

WHEREAS, the Council further finds that the Proposal fails to meet Policy A.8 of Community Form/Land Use Guideline 2, Centers, because the proposal is designed predominately to meet the needs of pass-by users, rather than area

residents, as the Proposal includes three drive-through areas in a development of only approximately 38,000 square feet, turns its back to the neighborhood through building orientation and design as previously discussed, does not provide direct pedestrian connections to adjacent residential developments or to currently undeveloped land that is zoned for residential use, and because mitigation for adjacent residential neighbors from what will be a significantly different use, including drive-through areas and delivery areas on the rear of the proposed buildings, consists only of a vinyl fence between two rows of trees, which, because the site sits at a significantly lower elevation than adjacent residential homes, is not likely to provide a true buffer between uses, and,

WHEREAS, the Council further finds that the Proposal fails to meet Policy A.9 of Community Form/Land Use Guideline 2, Centers, because new non-residential development in a Neighborhood Form is appropriate only if the property at issue is at the intersection of a collector street or above and if one corner of that intersection contains an existing non-residential use, and the Proposal would introduce the first non-residential element to the intersection of South Watterson Trail and South Hurstbourne Parkway rather than adding to an existing non-residential pattern of development in the area, and the Proposal does not, as explained more fully in other findings, relate to the existing neighborhood in such a way as to satisfy the requirements of Cornerstone 2020, and,

WHEREAS, the Council further finds that the Proposal fails to meet Policy A.11 of Community Form/Land Use Guideline 2, Centers, because the Proposal

is not designed to be compatible with existing area residential uses, in that the renderings presented to the Planning Commission show a development that turns its back to the neighborhood, as discussed previously, is clearly commercial in nature, featuring parapet-style roofs, storefront-style glass windows, wall sconces and awnings, rather than characteristically residential features such as hip or gable roofs, windows with lites and shutters, and post-mounted lighting, contains three drive-through areas that appear to be designed to capture pass-through traffic, and provides landscaping that is designed to meet minimum standards, rather than to support the vision of the Hurstbourne Corridor Study, that Hurstborne Parkway have a lush, park-like character, which is not achieved through the landscaping provided through the Proposal, and,

WHEREAS, the Council further finds that the Proposal fails to meet Policy A.12 of Community Form/Land Use Guideline 2, Centers, because, though the Proposal includes a “plaza,” as shown on the development plan presented to the Planning Commission, and such “plaza” may technically qualify as a focal point under the Land Development Code, the location of the “plaza,” the lack of any direct connections to the “plaza” from adjacent residential development that could encourage its use by area residents, and the lack of any details presented to the Planning Commission as to its design and character, suggest that the “plaza” will not function as a true focal point to draw the eye, encourage community gathering, or draw attention, as is anticipated in the definition of “focal point” contained in Cornerstone 2020, but will instead serve as a secondary feature

designed to support the businesses that are anticipated to locate within the development, and,

WHEREAS, the Council further finds that the Proposal fails to meet Policy A.16 of Community Form/Land Use Guideline 2, Centers, because, though TARC does not currently serve the Subject Property, the Proposal does not suggest a location for a proposed future TARC stop along its perimeter or in its interior, does not include non-entrance-related pedestrian connections to perimeter sidewalks which could serve potential future TARC stops or sidewalks to provide a direct link between adjacent residential developments and the Proposal, and is clearly designed to face the roads rather than to relate to existing and potential future residential developments, with several drive-through areas and an emphasis on parking areas rather than on landscaping or pedestrian amenities, such as a central focal point, benches and substantial landscaping, to support vehicular access to the site, rather than pedestrian or transit access, and,

WHEREAS, the Council further finds that the Proposal fails to meet Policies A.1 and A.2 of Community Form/Land Use Guideline 3, Compatibility, because it is not designed to blend with its surrounding neighborhood, which consists solely of residential uses, but is designed in a characteristically commercial style with parapet-style roofs, storefront-style glass windows, wall sconces and awnings, rather than with characteristically residential features such as hip or gable roofs, windows with lites and shutters, and post-mounted lighting, and, though the Proposal anticipates that the buildings will be clad in masonry,

compatibility in such a context cannot be achieved solely through the use of a particular building material, and,

WHEREAS, the Council further finds that the Proposal fails to meet Policy A.4 of Community Form/Land Use Guideline 3, Compatibility, because it has not been adequately demonstrated that the non-residential expansion into a universally residential area will not create adverse impacts on existing residential uses, particularly since proposed transitions between non-residential uses and residential uses consist solely of a vinyl fence between two rows of trees, which, because the Proposal sits at a significantly lower elevation than the adjacent existing residential development to the east, may not provide a true visual buffer between uses, no existing vegetation exists to improve the proposed buffer, and, although the largest of the three buildings is located immediately adjacent to it, no additional use-related transitions are provided between the R-4-zoned property to the south and the Proposal, and,

WHEREAS, the Council further finds that the Proposal fails to meet Policy A.9 of Community Form/Land Use Guideline 3, Compatibility, because no details regarding the landscaping proposed along South Hurstbourne Parkway have been provided, and although there are high-tension overhead power lines running along the property's perimeter in this area, the area is designated as a parkway buffer, which requires additional landscaping, particularly as this Proposal will be the first non-residential development along this portion of South Hurstbourne Parkway, and its landscaping will set the standard for future developments in the area, and because the Hurstbourne Corridor Study

supported the creation of a lush, park-like setting along Hurstbourne Parkway which the Proposal does not provide, despite the addition of a binding element to do so, as the binding element fails to set any tangible standards, other than the required use of flowering ground cover and flowering shrubbery, for the creation of such a setting, and

WHEREAS, the Council further finds that the Proposal fails to meet Policies A.21, A.22 and A.23 of Community Form/Land Use Guideline 3, Compatibility, because the transition provided between the R-6-zoned patio homes to the east and the R-4-zoned vacant property to the south is inadequate to buffer these properties from the imposition of a commercial use where no other property at the intersection of South Watterson Trail and South Hurstbourne Lane is zoned or used for commercial purposes, and the proposed transition between the Proposal and the patio homes consists only of a vinyl fence between two rows of trees, and the proposed transition between the Proposal and the R-4-zoned property to the south consists of the same fence and trees and a dry detention basin, and,

WHEREAS, the Council further finds that the Proposal fails to meet Policy A.23 of Community Form/Land Use Guideline 3, Compatibility, because a variance was requested to allow one of the two retail buildings to exceed the maximum setback from South Hurstbourne Parkway, which results in a large parking area being located in the space created by the variance, and further contradicts the intent of the Hurstbourne Corridor Study, which anticipates that parking and vehicular use areas should be well-screened from the road using

earth mounds, vegetation or location, and recommends significant landscaping of parking lots, none of which are included in the design for the Proposal, though parking areas are located adjacent to Hurstbourne Parkway, and, though, once the details have been provided, the Proposal might technically comply with the Land Development Code in providing landscaping, it does not create this park-like setting envisioned for the area and only proposes an open-ended binding element to require the applicant to work with staff to achieve this goal, but that identifies no specific standards, other than the use of flowering ground cover and shrubbery, to be used to achieve it, and,

WHEREAS, the Council further finds that the Proposal fails to meet Policy A.28 of Community Form/Land Use Guideline 3, Compatibility, because no detail has been presented about the appearance of the monument sign shown on the development plan presented to the Planning Commission, including any landscaping that may be planted around it, and Hurstbourne Parkway's status as a designated parkway suggests that special attention be given to the sign, and no information at all has been presented concerning attached signage on the proposed structures, and,

WHEREAS, the Council further finds that the Proposal fails to comply with Policy A.6 of Marketplace Guideline 6, Economic Growth and Sustainability, because the Proposal does not locate retail commercial development in an activity center which is defined in Cornerstone 2020 as "an area of concentrated, mixed-use activity that often has a residential component," and the intersection of South Hurstbourne Parkway and South Watterson Trail cannot be classified as a

center or a neighborhood center, as those terms are defined by Cornerstone 2020, because the area is not a compact, walkable activity area with neighborhood-serving uses such as retail, restaurants and services, and the intersection is purely residential in nature, and the Proposal does not create an activity center, because, as has been previously discussed, it fails to relate to the existing neighborhood, and,

WHEREAS, the Council further finds that the Proposal fails to comply with Policy A.3 of Mobility/Transportation Guideline 7, Circulation, because the Proposal is not designed to promote alternative forms of transportation such as bicycle, pedestrian and transit, because internal sidewalks connect to perimeter sidewalks only at vehicle use entrances rather than at a logical location for a future TARC stop in the event TARC extends its service area to this location, or directly to existing and potential future residential developments, no pedestrian cross-walks are shown through the parking lot, and the Proposal is clearly designed to accommodate pass-by users, as it is oriented to the adjacent streets, and designed with three drive-through areas to serve only approximately 38,000 square feet of space, and though a binding element was created to prevent drive-through restaurants, automobile repair, gas stations and liquor stores, these uses are permitted in the C-1 zoning district and could locate at the development as a matter of right, and,

WHEREAS, the Council further finds that the Proposal fails to comply with Policy A.6 of Mobility/Transportation Guideline 7, Circulation, because the Proposal does not include a cross-access point to the currently undeveloped R-

4-zoned property to the south to support whatever future development takes place on that property, and,

WHEREAS, the Council further finds that the Proposal fails to comply with Policies A.1, A.2, and A.3 of Mobility/Transportation Guideline 8, Bicycle, Pedestrian and Transit, because the Proposal is not designed to promote the use of alternative forms of transportation due to a lack of sidewalk connections to support possible future TARC stops or direct access from existing and future residential developments, no pedestrian crosswalks are identified as extending through the parking lot to provide recognizable and safe access for pedestrians crossing vehicular use areas of the site, and because bicycle parking spaces, though shown on the development plan presented to the Planning Commission, are tucked to the east side of the larger retail building, out of plain sight from most areas of the Proposal, such that those wishing to ride a bicycle to the site may not identify this area as a convenient and safe place to store a bicycle while visiting the development and therefore not use it as it was intended, and,

WHEREAS, the Council further finds that the Proposal fails to comply with Policy A.7 of Livability/Environment Guideline 13, Landscape Character, because the Proposal merely meets the requirements of the Land Development Code regarding landscape buffer areas, and no specific detail has been provided in a plan format concerning the treatment of the parkway buffer along South Hurstbourne Parkway or the proposed sign, though this is the first non-residential development proposed for this segment of the road and will set the standard for future area developments, and,

WHEREAS, the Council further finds that the Proposal does not meet the intent of the Hurstbourne Corridor Study's Objectives 2.a and 2.d, which recommend that landscaping will function to create a park-like character along both sides of Hurstbourne Parkway, that parking and vehicular use areas should be well screened from the road using earth mounds, vegetation or location, and that parking lots be significantly landscaped, because the Proposal does little more than the minimum required by the Land Development Code, does not show detail of the parkway buffer landscaping, and does not "significantly" landscape parking lots or create a park-like character along South Hurstbourne Parkway, and though a binding element was created to address the parkway buffer areas, it created no standards, other than the use of flowering ground cover and flowering shrubbery, by which to judge whether a "park-like" setting has been accomplished through the Proposal, and,

WHEREAS, the Council further finds that the Proposal fails to meet the intent of the Hurstbourne Corridor Study's Goal 10 and Objective 10a, which state that future uses of vacant or redeveloped parcels should be compatible with existing uses and contribute to the high quality of the Hurstbourne Corridor, and that commercial uses should be encouraged where those uses enhance existing and planned uses because, though building materials are predominately masonry, the Proposal is not designed to be residential in character—buildings are clearly commercial in nature and are designed as a "strip center" with one outlot, parapet-style roofs, storefront-style glass windows, wall sconces and awnings, rather than with characteristically residential features such as hip or

gable roofs, windows with lites and shutters, and post-mounted lighting, and the Proposal introduces a commercial element to an otherwise completely residential area; the closest commercial developments are approximately one-half mile north on Hurstbourne Parkway at Bardstown Road, and,

WHEREAS, the Council further finds that the Proposal fails to meet the intent of the Hurstbourne Corridor Study's Map 2, Sheet 4, which shows the development site as appropriate for development as low to medium density residential development, because current area land use patterns substantiate the validity of this intent, no new commercial development has been approved for the area surrounding the intersection of South Watterson Trail and South Hurstbourne Lane, and, although other land use recommendations of the Study have not been followed at other intersections along Hurstbourne Parkway, in this case, there has been no demonstration that the Proposal is so compliant with the guidance of Cornerstone 2020 as to justify going against the recommendations of the Study at this location,

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE BODY OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

Section I. That the property located at 5911 South Watterson Trail, containing a total of 6.3 acres and being in Louisville Metro, more particularly described in the minutes and records of the Planning Commission in Case No. 9153 will hereby remain zoned R-4, Single-Family Residential.

Section II. This Ordinance shall take effect upon passage and approval.

Kathleen J. Herron
Metro Council Clerk

Jim King
President of the Council

Jerry Abramson
Mayor

Approved: _____
Date

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney

BY: _____